IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 471 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KADAR SATTAR ALIAS MELO ANSARI GARANA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 471 of 1993

MR YOGESH S LAKHANI for Petitioner No. 1

MR RAVAL A.P.P.for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 11/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

1. This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') challenging the judgment and conviction order dated 30.1.1992 recorded by the learned Additional Sessions Judge, Jamnagar, in Sessions Case No.56/92 under which the learned Judge found present appellant original-accused No.2 guilty and convicted him for the offence punishable under Section 302 I.P.C. and sentenced him to suffer R.I. for life. The learned Judge further directed him to pay fine of Rs.500/-. The learned Judge also directed that in case of nonpayment of fine, the appellant shall undergo further R.I. for two months.

2. By the said judgement and order, the learned Judge also found that original accused No.1 was not guilty and, therefore, the said original accused No.1 came to be acquitted by the learned Judge.

3. The facts of the case leading to this appeal may be briefly stated as follows.

3.1. On 3.5.1992, the incident took place at Jamnagar. There was a lunch arranged at the place known as Sayed Ali Pir Dargah. The deceased Razak Iqbal, his brother Akbar Iqbal and others had gathered together for taking lunch at the said place. At about 1.30 p.m., the deceased brother of Akbar had gone to wash his hands. At that time there was some sprinkling of water drops on the person of the present appellant Kader Satar and one Hussain Babu Garana who was accused No.1 and who has been acquitted by the Trial Court. That because of the said event, the present appellant started giving abuses at which the deceased requested him not to give abuses. At that time, there was some oral exchange of words which ended in physical quarrel between the two i.e., between the deceased and the appellant, even the shirt of the deceased was torn in the said scuffle. One Hanif AliMahmad had given him a shirt which was then put on by the deceased. Other persons present there intervened and, therefore, the said matter came to an end. Thereafter, the deceased, his brother Akbar and others sat for lunch, and after completing the lunch, the deceased and his brother Akbar went out of the said place of lunch. One Sayed Mohmad was also following them.

4. Thereafter, when they were entering GadarShah Pir Street, the present appellant as well as co-accused Hussain Garana came from the adjoining street; out of

them, the present appellant came running and gave a knife blow on the chest of deceased Razak, which struck on the left side of the chest of the deceased. Because of the said knife blow, the deceased fell on the road and wound started bleeding. After the said incident, the co-accused Garana and the appellant had ran away from the said place. The witness Sayed Mohmad Arif Aziz, who was just following them arrived there and thereafter the father of the deceased had also arrived there. About 100-150 persons had gathered on the spot. Thereafter the deceased was taken to the Irwin Hospital at Jamnagar. The deceased was taken to the emergency ward of Irwin hospital at Jamnagar. The Doctor examined the deceased and declared him dead. Thereafter, First Information Report was lodged. Postmortem of the dead body of the deceased was carried out. Mudammal articles were seized. The appellant and co-accused both were arrested; statements of witnesses were recorded; relevant panchnama was drawn, inquest report was also drawn and at the end of the investigation, the Investigating Officer found that the appellant as well as the co-accused both had committed the aforesaid offence of murder of the deceased. Therefore, chargesheet was filed before the Court at Jamnagar. The learned Magistrate found that the offence punishable under Section 302 I.P.C. was exclusively triable by the Court of Sessions and, therefore, the case was committed to the Court of Sessions and, there it was registered as Sessions Case No.56/92. The learned Additional Session Judge ascertained that necessary copies of police papers were supplied to the appellant as well as to the co-accused and thereafter charge was framed at Exh.3. on 19.11.1992, for the said offence against the accused persons. There it was also alleged that the present appellant had held a knife in public place in violation of the notification of the District Magistrate and thereby committed offence punishable under Section 135 of the Bombay Police Act. The appellant as well as co-accused pleaded not guilty to the said charge and, therefore, the prosecution examined the witnesses. At the end of the Trial, the learned Additional Sessions Judge recorded further statements of both the accused persons under Section 313 of the said Code. Arguments were heard and the learned Judge pronounced his judgment holding that the first accused was not found guilty and, therefore, he came to be acquitted. So far as the present appellant is concerned, the learned Judge found that the evidence on record was sufficient to hold him guilty and, therefore, he was convicted for the offence punishable under Section 302 I.P.C. After hearing the defence on the point of quantum of punishment, the

learned Judge found that this was not the rarest of rare offence and, therefore, the learned Judge sentenced the appellant to suffer R.I. for life. The learned Judge also directed him to pay fine of Rs.500/- and in default of payment of fine he was directed to undergo further R.I. for two months. Necessary set-off was also provided in the order.

5. Feeling aggrieved by the said judgment and conviction order of the learned Additional Sessions Judge, the appellant, herein, has preferred this appeal before this Court. It has been mainly contended here that the learned Additional Sessions Judge has not properly appreciated the evidence produced before him; that the learned Judge ought to have held that the present appellant had not committed any offence; that the learned Judge has not properly appreciated the medical opinion that the offence has not been committed by the weapon produced before the Court; that even the evidence of the eye witnesses with respect to the weapon used at the offence is doubtful and it is not in accordance with the medical evidence and, therefore, the learned Additional Sessions Judge ought to have rejected the evidence of eye witnesses; that the learned Judge has omitted to consider that certain panch witnesses have turned hostile and have not supported the case of the prosecution; that though the incident is said to have taken place in a residential locality, no independent witness has been examined in support of the two eye-witnesses said to have been present there at the time of the offence. That even the incident of lunch has been falsely fabricated and there is no material to show that such a lunch was arranged as deposed by the two witnesses; that even the postmortem note is not in conformity with the allegations of the lunch arranged as aforesaid. That there was previous scuffle between the appellant and the deceased and this fact ought to have been properly appreciated by the Trial Court; that even the shirt in question has been wrongly brought in mudammal and the evidence with respect to it is contradictory; that the F.I.R. was filed late and there is a case of doubtful identity with respect to the present appellant; that certain witnesses important for the purpose of fair trial have not been examined by the prosecution; that on the whole, the judgment and the conviction order of the Trial Court are illegal and erroneous and deserve to be set aside. The appellant has therefore prayed that the present appeal be allowed, the judgment and conviction order be set aside, the appellant be acquitted for the charges levelled against him and he be set at liberty forthwith.

6. On receiving the appeal, it was ordered to be admitted but bail was refused. At the hearing, the arguments were advanced on behalf of the appellant by Mr.Y.S. Lakhani whereas arguments were advanced on behalf of the State by Mr.Raval, learned A.P.P. They have taken us through the oral and documentary evidence as well as through the reasoning and findings recorded in the judgment by the learned Trial Judge. We have considered the fact situation. We have also considered the oral and documentary evidence as well as the reasonings and findings of the Trial Court. We have also considered the relevant citations shown to us by the learned advocates for the parties in support of their arguments. However, on overall assessment of evidence on record, we find ourselves unable to agree with the arguments advanced by the learned advocate for the appellant. By and large, we are in general agreement with the reasonings and findings of the learned Trial Judge holding the appellant guilty for the aforesaid offence. In that view of the matter, it is not very much necessary to discuss the evidence at length which would amount to repetition of whatever is stated by the learned Trial Judge in the course of his judgment. On this point we would stand fortified by the decision of State of Gujarat v. Mansukhlal Lovchand Choksi reported in 1993 (2) G.L.H. 849.

7. At the same time, when the arguments have been advanced at length by the learned advocates for the parties it would be in the fitness of things to deal with those arguments atleast in a brief manner.

8. So far as the prosecution is concerned, it has examined following witnesses for proving the case against the appellants.

P.W.1 Ichashanker Harukhshanker — Exh.8 - who prepared the map of the place of the offence.

P.W.2 Akbar Iqbal (brother & eye-witness) — Exh.10 - who filed F.I.R.

P.W.3 Sayed Mohmad Arif Aziz — Exh.11 - Eye witness.

P.W.4 Hanif AliMohmad — Exh.12 - Eye witness.

P.W.5 Dr.Satish D. Kalel — Exh.14 - who performed postmortem of the

deceased.

P.W.6 Allarakha Gagubhai Exh.19 - Panch.

P.W.7 Harun Ishaq Exh.21 - Panch.

P.W.8 Mohmad Sidik Abdul Karim Exh.23 - Panch (hostile).

P.W.9 Anirudh Sinh Devubhai Exh.25 - Panch (hostile).

P.W.10 Dilubha Ranabhi Exh.27 - P.S.O.

P.W.11 Paresh Hemantbhai Exh.32 - Panch (hostile)

P.W.12 Jayendra Sinh Dinubha Exh.34 - Panch (hostile)

P.W.13 Ismail Daud Exh.35 - Panch (hostile)

P.W.14 Manilal K. Damor Exh.36 - Investigating Police officer.

P.W.15 Chunilal Babulal Exh.48 - Panch (hostile).

9. It is not much in dispute that the brother of the deceased and the informant Akbar Iqbal and his companion are the eye witnesses of the present case. They are the only persons shown and examined as eye witnesses. Out of them Akbar, Exh.10 is the brother of the deceased and, therefore, he would naturally have interest against the appellant and he would have some interest in seeing that the appellant is convicted. We are therefore, aware of this situation and, therefore, it would be necessary to undertake the scrutiny of the evidence of this witness very closely. This witness has stated on oath before the Trial Court that on 3.5.92 that he alongwith the deceased had gone to attend a lunch arranged at Sayed Pir Dargah at about 1.30 to 1.45 p.m.; then he has deposed about the initial hot exchange of words between the appellant and the deceased; then according to him both of them had some scuffle and in the process, the shirt of the deceased was torn and it was replaced by the shirt of Hanif AliMohmad. Thereafter, they took their meals and proceeded towards Gadar Shah Pir street. Thereafter, the witness has further stated that as soon as they were about to enter the said street, the deceased and the co-accused Babu Garana came there from the adjoining street. That the appellant had a knife in his hand and he gave a knife blow on the chest of the deceased which struck on the left side of his chest. As a result, the deceased fell on the road and the injury started bleeding. That Sayed

Mohmad Arif Aziz had also arrived there and other persons had also gathered there.

10. P.W.3 Sayed Mohmad Arif Aziz Exh.11 has provided full support and corroboration to the evidence of the informant Akbar. He was just following the deceased and the informant at a distance of about 5 feet and he has also deposed on oath that when these two brothers were about to enter the street, the appellant came in running from the adjoining street with knife in his hand and dealt a knife blow on the left side of the chest of the deceased. He had no reason to falsely implicate the appellant in a serious offence of murder of the deceased. He is not thick with the deceased/Akbar. He had no axe to grind against the appellant. He has stood the test of cross-examination and there also, his evidence has not been shaken to any extent. The Trial Court was justified in relying upon his evidence.

11. In fact, he seems to have been a witness to the incident at the place of lunch also. But he does not speak anything about it. Nonetheless, the learned Advocate for the accused persons before the Trial Court had brought out this contradiction on records which shows that it was the case before the police that he had seen the said incident also. Any way, his evidence fully supports the evidence of Akbar the informant so far the offence of murder is concerned.

12. Even the previous episode between the deceased and the appellant about seven to eight months before the date of the offence of murder of the deceased has been brought on records through his cross-examination by the learned advocate for the defence which proves that there was acquaintance and enmity between these two groups. He has denied that he had lent Rs.50,000/- to Rs.60,000/- to the deceased. There is no further evidence on records on this point.

13. P.W.4 Hanif Alimahmad Exh.12 has given evidence about the quarrel between the deceased and the appellant at the place of lunch. He had given his bushshirt to the deceased, as per his evidence. He had identified his blood stained shirt from mudammal articles which the deceased had put on at the time of offence and which was referred as such in his evidence by Dr.Kalel also.

14. On the evidence of this witness it has been strenuously argued by Mr.Lakhani that though the place of lunch is not away, no other witness has been examined in support of the evidence of this witness. Now there is no

evidence to show that some persons were standing outside the place where the lunch was arranged who had witnessed the incident in question. Therefore, there was no question of examination of such witnesses to support the evidence of this witness.

15. It is next contended that the entire story of lunch has been subsequently fabricated and no such lunch was arranged and the person arranging the lunch has not been examined. Now the arrangement of lunch is not the major part of the story of the prosecution. It is true that because, some incident had taken place at the place of lunch little before the incident in question, the person who had arranged the lunch could not be treated to be a necessary witness. It is nobody's case that the said person was present when the initial scuffle took place between the deceased and the appellant. It is nobody's case that he was standing outside the premises and had witnessed the incident in question. Therefore his evidence would not have led us to any particular direction. The learned advocate for the appellant has argued that even the fact of arrangement of lunch has been seriously disputed by the appellant and, therefore, the said witnesses were required to be examined. Now after all the challenge would take place only when the trial took place. Therefore, really speaking when the fact of lunch is not at all a major part of the incident in question, and when the person who had arranged the lunch was not necessary witness, non examination of the said witness cannot be treated to be fatal on the case of the prosecution.

16. The learned advocate for the appellant has also argued at length that the evidence of witnesses is contrary to the medical evidence, since the postmortem note shows no presence of undigested food in the stomach of the deceased. It would be necessary to read the evidence of Doctor Kalel a little closely. The witness Dr.Kalel is at Exh.14. It has come out from his evidence that if the food particles are mixed up with the blood then, it would not be possible to identify the same. He also says that rice or mutton could or could not be identified in the pool of blood. Therefore simply because the Doctor had not noticed the existence of undigested food in the stomach of the deceased, it could not be said that the deceased had not taken any food little before the incident in question. In that case, the entire story of the lunch cannot be treated to be a fabricated one. From this angle it cannot be said that the evidence of eye witnesses is contrary to the evidence of the Medical Officer and the postmortem note, and,

therefore, the evidence of eye witnesses should be rejected by this Court.

17. It was then argued by the learned advocate for the appellant that the place of offence is a public place at the junction of streets. The place is surrounded by a residential locality also. It is therefore contended that so many persons were available as eye witnesses and they have not been examined. It is further argued that even the place where the lunch was arranged is also not far away from the scene of the offence and, therefore, some witness from that place could also be available to the prosecution for supporting the evidence of the brother of the deceased, Akbar Iqbal.

18. The fact is not in dispute. It is true that the scene of offence is not far away from the place where the lunch was arranged. At the same time there is no evidence to show that some persons were standing outside that place so as to witness the incident in question. Therefore, even if the place of lunch was not away from the scene of the offence, there is nothing on record to propose the presence of some witnesses outside the said place in order to witness the incident in question.

19. So far the surrounding houses are concerned, some windows open towards the place where the incident took place. But at the same time, the incident had taken place in a very short time. The deceased and his brother Akbar were about to enter the street. The present appellant rushed from the adjoining street. He gave a knife blow on the chest of the deceased and then ran away. Looking to the time sphere it would not be possible to hold that the incident would have been witnessed by so many persons since the persons residing in the surrounding areas may not be present at the window, to witness the incident. Even the charge also shows that the incident took place at about 2.30 p.m.. Therefore, normally, the persons residing in the neighbourhood may not be sitting at the window to witness the incident. Even with respect to the persons passing through the said area, it may be said that they may be little late. They may not have witnessed the appellant causing injury to the deceased. Moreover, apart from the evidence of Akbar, there is evidence of another eye witness Sayed Mohmad Arif Aziz at Exh.11, who has clearly supported the evidence of Akbar Iqbal and there is no material contradiction between the evidence of these two witness. The said witness Exh.11 is not proved to have any interest in favour of the deceased or against the appellant. His evidence completely corroborates the

evidence of Akbar. Both have said that the deceased and witness Akbar Exh.10 were about to enter the street and at that time, the appellant came running from the adjoining street and gave a knife blow on the chest of the deceased. In fact, Akbar Exh.10 was just going by the side of the deceased and Sayed Mohmad Arif Aziz, Exh.11 was just following them. Looking to the evidence of these two witnesses, there is hardly any possibility of any other independent witness who may have witnessed the incident in question. Again it was 2.30 p.m. and, therefore, so many persons would not be passing at that time at the place of incident to witness the incident. Even otherwise, number of witnesses is not a relevant or material aspect to prove the case of the prosecution. It is said that the evidence is required to be weighed and it is not required to be counted. Sometimes, there may be number of witnesses and yet their evidence may not be accepted by the Court. At the same time, the conviction can also be based on the evidence of a solitary witness. Therefore, when two witnesses have consistently given evidence supporting the case of the prosecution, it cannot be said that some more witnesses should have been examined by the prosecution.

20. It is then contended that the knife produced as mudammal article is not proved to be the knife with which the injury was caused by the appellant to the deceased. It is true that the medical evidence shows that the present injury on the person of the deceased could not be caused by the mudammal knife. At the same time, it is also the matter on record that the brother Akbar Iqbal has clearly stated that this was not the knife with which the offence was committed. In any way, it is not necessary that the offence must be proved to have been committed by the weapon which is produced as a mudammal article before the Court, since the mudammal weapon may either be attached from the possession of the accused or be discovered by the accused.

21. It is then argued that according to the evidence of the witnesses, the blade of the knife used by the appellant for committing the offence was like a saw and according to the medical evidence the injury could not have been caused by such a knife. Now as said above, the incident had taken place in a very short time. The appellant had come to the spot running to cause injury to the deceased and had run away soon after inflicting one knife blow. In that view of the matter, the witnesses may not have a very clear and close vision of the blade of the knife handled by the appellant at the time of committing the offence. Therefore, this cannot be

treated to be a very major and important contradiction between the medical evidence and the evidence of two eye witnesses. In that view of the matter, the evidence of the two eye witnesses cannot be rejected on this consideration.

22. The witness Akbar Iqbal has once stated that he did not know the appellant before the incident of the offence. The learned advocate for the appellant has argued that in that view of the matter, there should have been an identification parade in order to ascertain the identity of the present appellant. It is a fact that the F.I.R. has been filed soon after the occurrence of the incident. There was a previous altercation between the deceased and the appellant little before they took the meal at the place at which the lunch was arranged. Even the defence has suggested that there was a previous enmity. This shows that the witness Akbar, in fact, knew the appellant before the incident. He had named the appellant in the F.I.R. Even the witness Exh.11 has also given the name of the appellant as the assailant who had given a knife blow on the persons of the deceased. There was no question of identity of the appellant in the evidence of this witness. The question of identity of the appellant was not seriously disputed during the course of the evidence of the second witness Sayed Mohmad Arif Aziz Exh.11. At the same time, there was no enmity between the appellant and the witness Exh.11. When the witness had clearly stated in his evidence about the previous dispute between the deceased and the appellant and when he had clearly given the name of the appellant right from the beginning in unequivocal terms and when he had named the appellant during the course of investigation as well as of the Court proceedings. There could hardly be any question of identity of the appellant. It happens that in some case, the witnesses get irritated, they get confused, they get excited, sometimes they get annoyed. After all, the witnesses are coming to the Court to assist it from different spheres of the society, some of them are well educated, some of them are uneducated, some of them are literate, some of them are semi literate and some of them are illiterate. Apart from their school and college education, the witnesses may not have sufficient background of education around them. Even the culture of their family would also play an important and vital role in the conduct and behaviour of such witnesses. In that view of the matter, if on account of such circumstances, if some witnesses say a word here or there, then the Court should not pick up such words in isolation. As stated, the witness has clearly named the appellant in the F.I.R. Even his

colleague Exh.11 has also given the name and identification of the appellant during the course of his evidence. Even Akbar Iqbal has also given the history of the incident which took place little before the meals they had. At that time, the appellant was present and because of sprinkling of water drops, there was some quarrel between the deceased and the appellant. The witness has described the said event also. Then the shirt of the deceased was torn and another shirt was provided to him and soon thereafter, the incident of murder took place. This shows that the witness Akbar Iqbal was fully acquainted about the identity of the appellant and, therefore, if he has said something about the identity that he did not know the appellant and he got the name of the appellant from another source then it has to be taken that such sentence or words should not be taken out in isolation to exclude the probability of Akbar Iqbal being eye-witness to the incident as said above. This is not the way of interpretation of evidence of the witness. It seems that the witness was cross examined at length and, therefore, he may have been annoyed to some extent and, therefore, he might have used a few words here or there about the identity of the appellant. But in view of the overall testimony given by the witness supported by Sayed Mohmad Arif Aziz, there is no room for doubt about the identity of the appellant when it is said by him that the present injury suffered by the deceased was caused by the appellant and it cannot be said that some unknown person gave knife blow on the person of the deceased and ran away thereafter. Even if the deceased, who was the brother of Akbar Iqbal, had some enmity with the appellant, it cannot be said that Akbar Iqbal was not on good terms with the appellant. There is nothing on record to show that Akbar Iqbal did not have cordial relations with the appellant.

23. Apart from the evidence of Akbar Iqbal, Sayed Mohmadd Arif Aziz Exh.11 has supported the case of the appellant and he had no reason to falsely implicate the appellant in a serious charge of murder of the deceased. In the premises, the learned Judge has rightly held that it was the appellant and the appellant alone who had inflicted knife blow on the person of the deceased and had committed his murder.

24. Then there is some controversy about the shirt. Now it has to be seen that at one stage the witness has stated that the red shirt was not in the mudammal. It may be that at that time the red shirt may not have been shown to him. The fact remains that the red shirt is there as one of the mudammal articles and there cannot be

any dispute about the same. Even the witness Hanif AliMohmad Exh.12 has supported the case of the prosecution. He has given evidence about the incident which had taken place where the lunch was arranged. He has deposed that the deceased had taken his shirt and had told him that he would return it after the lunch. He has identified the mudammal shirt as his shirt which was given by him to the deceased as above. It would be important to note that even this witness has clearly deposed that at the place where the lunch was arranged the appellant and the deceased had some quarrel. He has also identified the appellant as the person who had been involved in the said quarrel. This clearly establishes the identity of the appellant to be the person who had committed the offence in question. Even if we look at the evidence with respect to the mudammal articles it is clear that the mudammal bushshirt article 7 was not the bush-shirt put on by the deceased. It was blue in colour. Even the evidence shows that deceased had put on the blue shirt at the time when the incident of murder took place. Even this witness has also deposed that he had given his blue shirt to the deceased soon after the quarrel between the appellant and the deceased. This corroborates the entire prosecution case. Even the other two mudammal articles were pant and the nicker of the deceased put on by him at the time of the incident. It is in evidence that the deceased had put on red shirt in the beginning and that was torn off because of the quarrel between the deceased and the appellant. This fact has also been established on record. Even Doctor Kalel has also stated that the deceased had put on blue shirt at the time when he examined him. That the deceased also put on white pant at that point of time. This also corroborates the testimony of the two eye witnesses. The evidence of the panch witness at Exh.19 is that when the panchnama was drawn the deceased had put on blue shirt, white pant and nicker and they were all stained with blood. This further supports the case of the prosecution that the deceased had put on blue shirt at the time when the offence was committed. Inquest panchnama Exh.20 further supports the said evidence of the said witness. There is no material contradiction and improvement in the evidence produced by the prosecution with respect to the identity of the mudammal articles. The evidence of the Medical Officer completely corroborates the evidence of the two eye witnesses.

25. The Medical Officer as well as postmortem report both clearly say that the deceased had vertical 3 cm x 1.5 cm stab wound on left side of chest, 15 cm left of middle chest and 15 cm below top of left shoulder. Even

further details and explanation have also been given with respect to the said injury in the evidence of the Medical Officer as well as in the postmortem note. This completely corroborates the testimony of the two eye witnesses. Now if the two eye witnesses were not present at the time when the deceased received the said injury, then the witnesses would not know as to how the incident took place and they may not have been able to say that the injury was caused by a knife. They have clearly said that the injury has been caused by knife. They have further said that the knife present in the mudammal article was not used by the appellant; that further gets corroboration from the evidence of the Doctor and the postmortem note. The Doctor has clearly deposed that the injury was sufficient in the ordinary course of nature to cause the death of the deceased. In that view of the matter there is sufficient material on record to show that the injury was caused to the deceased by the appellant and the appellant alone. The evidence further shows that the appellant intended to commit the murder of the deceased at the time of the offence. There was some previous enmity between the two. Even little before the lunch, there was some oral exchange of words between the two. It was followed by physical quarrel between the two. Thereafter when the deceased and the appellant left the place of the lunch the appellant came with the knife in his hand and gave a knife blow on the left side of the chest of the deceased. It would be seen that he had come running towards the deceased. This shows that he had a clear intention of committing the murder of the deceased. Here also the speed of the appellant towards the deceased was by itself an important aspect of the case. Because of the fact that the entire body of the appellant was in motion, the blow could be inflicted forcefully. On the other hand since the appellant was in a running position he could run away very easily from the place of the incident soon after committing murder of the deceased. This would also show that if the appellant had run away very fast then there would be less possibility of having more number of witnesses to witness the incident. This thing clearly shows that the deceased was murdered by the appellant intentionally.

26. Mr.Lakhani, learned advocate for the appellant has argued at length that even if the incident as alleged is believed to be proved, then also it could not be said that the appellant had an intention to commit the murder of the deceased. He has submitted that there was some previous enmity followed by some exchange of words and thereafter, the incident had taken place soon thereafter. He has also submitted that the appellant had given a

solitary blow which shows that the appellant did not have an intention to commit the murder of the deceased. It is not possible to accept the said argument of Mr.Lakhani that the appellant did not have intention to commit the murder of the deceased and therefore, at the best he may be convicted for offence punishable under Section 304 Part-I or Part-II of the I.P.C.

27. In support of the said arguments Mr.Lakhani, has relied upon certain decisions. In Panchaiah v. State of Karnataka reported in 1994 Criminal Law Journal 1213 S.C. there was a previous enmity between the two. However, the injury was caused by cycle chain and no deadly weapon was used. Therefore it was held that it was not a case in which there was a proof of intention to cause death of the deceased. It was also held that only knowledge can be attributed to the accused person and therefore the accused was found guilty for the offence punishable under Section 304 Part-II read with Section 34 of the I.P.C. In Gurmail Singh v. State of Punjab reported in 1982 S.C. 1466, also it was a case of a single injury. There was again some altercation between the father of the accused and deceased. Having regard to the facts and circumstances of the case it was found to be a case punishable under Section 304 Part-II of I.P.C. The same view was adopted in Jagrup Singh v. State of Haryana reported in 1981 S.C. 1552. There the blow was inflicted by blunt side of gandhala and it was dealt in a heat of moment and without premeditation. Even in Randhir Singh v. State of Punjab reported in 1982 S.C.55. also there was some altercation and only one injury was caused. The weapon was not held by the accused in advance and there was no premeditation and the death took place six days after the incident. It was observed that in the said set of facts it cannot be said that the accused really intended to cause that particular injury which actually was caused to him.

28. The case before us is having distinct facts and circumstances. The previous enmity was an old matter. There is no allegation or proof of any recent incident between the appellant and the deceased. Even the event of the sprinkling of water drops and scuffle was not immediately before the incident in question. In fact, it is evident that after the said quarrel between the appellant and the deceased, they took their meals and after completing the meals they left the place of lunch and they proceeded to their residence. This shows that there was neither grave nor sudden provocation before the appellant dealt a knife blow on the deceased. There was

sufficient time for the appellant to cool down before the incident in question.

29. Then the appellant had come rushing and running towards the deceased with a knife in his hand. That clearly indicates that the only intention of the appellant was to see that the deceased was killed. Having regard to the aforesaid facts of the case, the above decisions cited by Mr.Lakhani would not apply to the facts of the case before us. Even the decision of the V. Sreedharan v. State of Kerala reported in 1992 S.C. 754 cited by Mr. Lakhani for the appellant will not come to the rescue of the appellant. There, the facts were different. The deceased had gone to the house of the appellant on the day of Onam celebration. The appellant and his mother were taking food in the kitchen. It seems that the deceased had asked to give him food but the wife of the appellant objected to the same and asked the deceased to go away. At that time, the deceased became furious and while daring the appellant for not giving food to him he kicked the plate containing food served to the appellant and went out of the house on the road. He also challenged the appellant to come out. The appellant at that stage followed him with a dagger and caught him at about 81 feet away from the house and gave dagger blow to him. The above facts clearly show that the deceased had instigated the appellant and, therefore, it was found to be a case punishable under Section 304 Part-II I.P.C. Here the facts are quite different. There was no grave or sudden provocation. There was some time between the quarrel/scuffle and the incident in question and, therefore, the decision in the above case on the facts of that case would not help the present appellant in the present case. Even the argument that this case would also fall under Section 304 Part-I or Part-II of the I.P.C. can also not be accepted.

30. In order to get some idea about the intention of the appellant, we can take the example of a fast bowler who takes a reasonably long run before bowling a fast ball. He cannot bowl so fast if he does not run before bowling. In the present case before us also, the appellant came running towards the deceased and in the same running action, he dealt knife blow on the chest of the deceased. The fact that he came running is a material event which clearly proves that the appellant intended to inflict a very forceful blow on the person of the deceased.

31. Then the blow dealt by him was really very much powerful. This can be gathered from the evidence of

Dr.Kalel who has deposed in very clear terms that this single injury was sufficient in the ordinary course of nature to cause the death of the deceased.

32. Even the part of the body, i.e. the chest, of the deceased selected for inflicting a forceful blow of knife is another proof of the intention of the appellant to kill the deceased. Here also, the blow was inflicted on the left side of the chest. Everybody knows that the human beings have their heart on the left side of the chest. Ordinarily, it is not possible to save a person sustaining heart injury through a forceful knife blow.

33. At this moment, there was no exchange of words. No quarrel. No fight. No exchange of abuses. A direct forceful knife blow on the left side of the chest of the deceased and everything was over. Even if the blow could not hurt or penetrate the heart of the deceased, it did cause injury to the lung, which is equally a vital part of the body of a human being. In the fact situation, there was absolutely no room for any sort of grave and sudden provocation also.

34. Once these factors are taken into consideration collectively, it becomes day light clear that the forceful knife blow was inflicted by the appellant to the deceased on his left side of the chest causing injury to his lung, with a sole intention to commit his murder. In the premises, the case cannot be taken out of the clutches of Section 302 I.P.C. as argued and suggested by Mr.Lakhani for the appellant.

35. On the other hand Mr.Raval, learned A.P.P. has also relied upon the case of Jaiprakash v. State (Delhi Administration) reported in (1991) 2 S.C.C. 32 wherein it has been observed that when the injury is proved or found to be sufficient in the ordinary course of nature to cause the death of the deceased than Clause-III of Section 300 of IPC would apply and in the present case also the injury is proved to be sufficient in the ordinary course of nature to cause the death of the deceased. We have been taken through the reasonings and findings of the learned Trial Judge. It seems that the learned Judge had properly appreciated the evidence before him and in so doing, we find that, there was no sufficient evidence against original accused No.1 Hussain Babu Garana and therefore, he was acquitted by the learned Trial Judge. At the same time, the present appellant was found guilty for committing the offence of murder of the deceased, We find that cogent reasons have been given by the learned Trial Judge for finding the

appellant guilty for the said offence. We find ourselves unable to disagree with the findings and reasonings of the Trial Court. Any way, on going through the oral and documentary evidence on record and on overall reappreciation of evidence on records, we find that the appellant had committed the offence in question and there is sufficient material on record to prove that the appellant had intentionally committed the murder of the deceased. Therefore we confirm the reasonings and findings recorded by the learned Trial Judge and in that view of the matter, we find no merit in the present appeal. Therefore the appeal deserves to be dismissed. In the aforesaid view of the matter, the appeal is ordered to be dismissed. The judgment and conviction order recorded by the Trial Court are hereby confirmed.

(B.J. Shethna, J.)

(D.P. Buch, J.)

/phalguni